

AN ORDINANCE

**BY COUNCILMEMBERS CLAIR MULLER, HOWARD SHOOK AND ANNE FAUVER
AS SUBSTITUTED BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION
COMMITTEE**

**AN ORDINANCE AS SUBSTITUTED TO AMEND ARTICLE
IV, SECTION 74 OF THE CITY OF ATLANTA CODE OF
ORDINANCES, TO PROVIDE FOR A MORE EFFECTIVE
MEANS OF ENFORCING PROVISIONS OF THE NOISE
CONTROL CODE; AND FOR OTHER PURPOSES.**

WHEREAS, it is declared to be the policy of the City of Atlanta to prohibit noise disturbances or unreasonable noise from all sources in order to secure and promote the public health, comfort, convenience, safety, welfare and prosperity of the citizens of Atlanta; and

WHEREAS, the City has created standards and prohibitions regulating the level, volume and tone of sound emanating from various sources; and

WHEREAS, it is the stated purpose of these standards and prohibitions to prevent noise disturbances or unreasonable noise; and

WHEREAS, the enforcement of these standards and prohibitions is subject to the power of its police; and

WHEREAS, the current technical standards within the Code of Ordinances create certain obstacles for the police in enforcing these ordinances; and

WHEREAS, the City must create more readily enforceable standards to allow its police to properly enforce the stated purpose of these ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1: That Section 74-131 be amended to include the following words, terms and phrases, so that the new Section 74-131 shall include:

Noise control officer (NCO) means any police officer or officially designated employee the municipality has trained in the standards for the measurement of sound and empowered to issue a summons for violations of this article.

Plainly audible means any sound produced by a noise source, which can be heard by any person at prescribed distances. Measurement standards shall be the auditory senses, based upon direct line of sight. Words or phrases need not be discernible and low frequency sound reverberations are included.

Sound amplification system means any radio, tape player, compact disc player, loudspeaker or other electronic or digital device used for the amplification of the human voice, music or other sounds.

Stationary noise source means any permanent or temporary noise source, including but not limited to any sound amplification system, which is fixed in a station, position, location, course, or mode, or is unchanging in nature.

SECTION 2: That Section 74-133 shall be amended, so that the new Section 74-133 shall read:

Sec. 74-133. Declaration of policy.

The provisions hereinafter contained are enacted for the purpose of preventing noise disturbances. Above certain levels, noise or noise disturbances are detrimental to the health and welfare of the citizenry and the individual's right to peaceful and quiet enjoyment. Therefore, it is hereby declared to be the policy of the city to prohibit noise disturbances from all sources, subject to its police power in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Atlanta. Nothing in this article is intended to deter individuals from lawfully exercising the individual right to freedom of speech or any other freedom guaranteed under the Constitutions of the United States of America or of the State of Georgia.

SECTION 3: That Section 74-136. Sound level limitations. shall retain (a) and (b) as currently written, and be amended to include (c), so that the new (c) shall read:

Sec. 74-136. Sound level limitations.

- (a) No person shall cause, suffer, allow, or permit the operation of any noise source on a particular category of property or any public space or right-of-way in such a manner as to create a sound level that exceeds the ambient sound level by ten dBA or more during daytime hours (9:01 a.m.--10:00 p.m.) or five dBA or more during nighttime hours (10:01 p.m.--9:00 a.m.) when measured at or within the real property line of the receiving property, except as provided in section 74-138. Such a noise source would constitute a noise disturbance if it continues in excess of six minutes, unless otherwise provided herein.

- (1) If the ambient sound level cannot be determined, the absolute sound level limits set forth in Table 2 shall be used.

Table 2: Maximum permissible sound levels Leq dB (A) - Averaged over six minutes

Receiving property	Daytime (9:01 a.m.--10:00 p.m.)	Nighttime (10:01 p.m.--9:00 a.m.)
Zoning classification R1--R5 or RG	55	50
Commercial	70	65
Industrial	75	70

At no time shall noise levels be produced that exceed 65 dB(C) Leq (one second) at a residential receiving property line.

- (2) If the sound source in question is a pure tone, then the sound level limitations as set forth in subsection 74-136(a) shall be reduced by five dB.
- (3) Non-repetitive impulsive sound sources shall not exceed 100 dB(C) at or within a residential real property line, using the fast meter response speed.

(b) Inside multi-family dwelling unit buildings, if the ambient sound level cannot be determined, the daytime limit is 45 dBC and the nighttime limit is 35 dBC for sounds originating in another dwelling within the same building.

(c) At the discretion of the arresting officer and as an alternative to making a determination based upon the ambient sound level or absolute sound level, the following standards shall be used for sounds emanating from any noise source located on any residential property, commercial property, or public property:

- (1) Between the hours of 8:00 a.m. and 9:00 p.m., sound emanating from any noise source shall be limited in volume, tone and intensity so that the sound shall not be plainly audible to any person at a distance of two-hundred (200) or more feet from the real property line of the property on which the noise source is located.
- (2) Between the hours of 9:00 p.m. and 8:00 a.m., sound emanating from any noise source shall be limited in volume, tone and intensity so that the sound shall not be plainly audible to any person at a distance of fifty (50) or more feet from the real property line of the property on which the noise source is located.

SECTION 4: That Section 74-137 shall be amended, so that the new Section 74-137 shall read:

Sec. 74-137. Specific prohibited acts.

- (a) It is unlawful and a violation of this Code for any person to cause, suffer, allow, or permit to be made verbally or mechanically any noise disturbance, according to the provisions of section 74-136.

(b) No person shall cause, suffer, allow, or permit the following acts:

- (1) Owning, possessing, or harboring any animal or bird that, for a continued duration in excess of 15 minutes, generates sounds that create a noise disturbance across a residential real property line;
- (2) Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, liquids, garbage cans, refuse, or similar objects, or the pneumatic or pumped loading or unloading of bulk materials in liquid, gaseous, powder, or pellet form, or the compacting of refuse by persons engaged in the business of scavenging or garbage collection, whether private or municipal, between 9:00 p.m. and 7:00 a.m. the following day on a weekday and between 9:00 p.m. and 9:00 a.m. the following day on a weekend day or legal holiday, except by permit, when the sound therefrom creates a noise disturbance across a residential property line;
- (3) Operating or permitting the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle, for a period of longer than five minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion or emergency work, and where such vehicle's manufacturer's gross weight rating is in excess of 10,000 lbs., on a public right-of-way or public space within 150 feet of a residential area between 8:00 p.m. and 8:00 a.m. the following day;
- (4) Operating or permitting the operation of any power tools or other motorized equipment used in construction, drilling, earthmoving, excavating, or demolition work between 7:00 p.m. and 7:00 a.m. the following day on a weekday or between 7:00 p.m. and 9:00 a.m. on a weekend day or legal holiday, except for emergency work by permit for temporary variance pursuant to section 74-139.

(c) *Loud sound amplification systems.*

- (1) No person shall play, use or operate, or permit to be played, used, or operated, any sound amplification system, so that the sound is plainly audible to any person at a distance of fifty (50) or more feet from the noise source.
- (2) No person shall play, use or operate, or permit to be played, used, or operated, any sound amplification system on or within any private property, so that the sound is plainly audible to any person at a distance of fifty (50) or more feet from the real property line of the property on which the noise source is located.
- (3) It is an affirmative defense to charge under this section that the operator was not otherwise prohibited by law from operating the sound amplification system, and that any of the following apply:
 - a. The system was being operated to request medical or emergency assistance or to warn of a hazardous road condition;
 - b. The system was being operated to provide emergency information or to warn of an emergency condition;
 - c. A temporary variance was granted according to the provisions of Section 74-139, and the system was otherwise permitted to be used for the purpose of giving instructions,

directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons;

- d. A temporary variance was granted according to the provisions of Section 74-139, and the loud sound amplification system was used in otherwise authorized and permitted public activities, such as parades, fireworks, sports events, musical productions and other activities which have the approval of the department of the City authorized to grant such approval.

SECTION 5: That Section 74-138 (j) shall be amended, so that the new Section 74-138 (j) shall read:

(j) Noise generated from municipally sponsored or approved celebrations or events that are open to the public without charge for admission shall be exempt from the provisions of this article.

SECTION 6: That Section 74-138 (l) shall be amended, so that the new Section 74-138 (l) shall read:

(l) Any noise resulting from activities of a temporary duration, for which a permit for temporary variance has been granted pursuant to this article, and which conforms to the conditions and limits stated thereon shall be exempt from the provisions of this article.

SECTION 7: That Section 74-139 shall be amended, so that the new Section 74-139 shall read:

Sec. 74-139. Conditions for permits for temporary variance.

(a) Any person who owns or operates any stationary noise source may apply to the City of Atlanta for a temporary variance from one or more of the provisions of this article. Applications for a permit of temporary variance shall supply information including, but not limited to:

- (1) The nature and location of the noise source for which such application is made;
- (2) The reason for which the permit of temporary variance is requested, including the hardship that will result to the applicant, his/her client, or the public if the permit of temporary variance is not granted;
- (3) The level of noise that will occur during the period of the temporary variance;
- (4) The section or sections of this ordinance for which the permit of temporary variance shall apply;
- (5) A description of interim noise control measures to be taken for the applicant to minimize noise and the impacts occurring therefrom; and
- (6) A specific schedule of the noise control measures that shall be taken to bring the source into compliance with this article within a reasonable time.

(a1) Failure to supply the information required by the City of Atlanta shall be cause for rejection of the application.

- (a2) A copy of the permit of temporary variance must be kept on file by the municipal clerk for public inspection.
- (b) The City of Atlanta shall charge the applicant a fee of \$25.00 to cover expenses resulting from the processing of the application for a permit of temporary variance.
- (c) The City of Atlanta may, at its discretion, limit the duration of the permit of temporary variance, which, in any event, shall be effective no longer than forty-five (45) days. Any person holding a permit of temporary variance and requesting an extension of time shall apply for a new permit of temporary variance under the provisions of this section, provided however, that no further permit of temporary variance shall be issued for any particular location, activity or event if the sum of the number of days that previous permits of temporary variance for such particular location, activity or event were in effect, plus the number of days requested for the new permit or extension of an existing permit shall exceed forty-five (45) days in any calendar year.
- (d) No temporary variance shall be approved unless the applicant presents adequate proof that:
- (1) Noise levels occurring during the period of the temporary variance will not constitute a danger to public health; and
 - (2) Compliance with the article would impose an unreasonable hardship on the applicant without equal or greater benefits to the public.
- (e) In making the determination of granting a temporary variance, the City of Atlanta shall consider the following factors:
- (1) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused;
 - (2) The social and economic value of the activity for which the temporary variance is sought; and
 - (3) The ability of the applicant to apply the best practical noise control measures.
- (f) The permit of temporary variance may be revoked by the City of Atlanta if the terms of the permit of temporary variance are violated.
- (g) A temporary variance permit may be revoked by the City of Atlanta if there is:
- (1) Violation of one or more conditions of the temporary variance;
 - (2) Material misrepresentation of fact in the temporary variance application; or
 - (3) Material change in any of the circumstances relied on by the City of Atlanta in granting the temporary variance.

SECTION 8: That Section 74-140 shall be amended, so that the new Section 74-140 shall read:

Sec. 74-140. Enforcement procedures.

- (a) Violation of any provision of this article shall be cause for a citation to be issued by an NCO according to procedures set forth in the City Code of Ordinances.
- (b) In lieu of issuing a citation, an NCO may issue an order requiring abatement of any sound source alleged to be in violation of this article within a reasonable time period and according to guidelines that the NCO may prescribe.
- (c) *Penalties.* Any person convicted of a violation of any provision of this article shall be subject to the following penalties:
 - (1) A fine not more than \$ 1,000.00, or a period of confinement in the city jail not to exceed ten (10) days and a probationary period not to exceed one-hundred eighty (180) days, or both.
 - (2) In addition to any other penalties provided in this section, upon conviction, the judge may issue an order requiring abatement of any sound source found to be in violation of this article within a reasonable time period, not to exceed sixty (60) days, and according to any guidelines that the city may prescribe.
 - a. Within the time period provided by the judge or the city for the abatement of any sound source found to be in violation of any provision of this article, any person or business ordered to abate any sound source found to be in violation of any provision of this article shall demonstrate to the city full compliance with any order requiring abatement according to any further guidelines the city may prescribe.
 - b. During any given time period provided by a judge or the city for the abatement of any sound source found in violation of this article, no citation or notice of violation shall be issued for that sound source.
 - c. Any person failing to abate any sound source found to be in violation of any provision of this article shall be liable to the city for the amount of all costs and expenses incurred by the city in abating a nuisance.
 - (3) Each day or portion thereof during which any violation occurs shall constitute an additional, separate, and distinct offense.
- (d) No provision of this article shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this article or from other law.

SECTION 9: That Section 74-142 shall be amended so that the new Section 74-142 shall read as follows:

Section 74-142. Severability.

If any provision, clause, sentence or paragraph of this Article, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this article which can be given effect without the invalid provisions or application and, to this end, the provisions of this Article are hereby declared to be severable.

SECTION 10: All ordinances or parts of ordinances in conflict herewith are hereby repealed.